

910 KAR 2:020. Referral process for adult guardianship.

RELATES TO: KRS 209.020(5), 210.290(3), (4), 387.500-387.990, Chapter 389A

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes referral requirements for adult guardianship.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020.

(2) "Conservator" is defined by KRS 387.510(1).

(3) "Court" means a court of competent jurisdiction.

(4) "Disabled" is defined by KRS 387.510(8).

(5) "Division" means the Division of Guardianship.

(6) "Fiduciary Services" means a central office branch under the Division of Guardianship.

(7) "Field Services Branch" means a central office branch under the Division of Guardianship.

(8) "Informal network of support" means:

(a) A family member;

(b) A friend;

(c) A neighbor in the life of the individual needing assistance; or

(d) Another interested person or entity.

(9) "Inquiry" means an individual or entity requesting information regarding guardianship services.

(10) "Least restrictive alternatives" means an alternative to guardianship that have been exhausted such as:

(a) Power of attorney;

(b) Living wills;

(c) Advanced directives;

(d) Case management;

(e) Representative payee;

(f) Curator;

(g) Trustee;

(h) Health care surrogate;

(i) Ex-parte order;

(j) Emergency protective services;

(k) Adult protective ongoing services; or

(l) Informal network of support.

(11) "Limited conservator" is defined by KRS 387.510(2).

(12) "Limited guardian" is defined by KRS 387.510(4).

(13) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. Telephone;

2. Stationery;

- 3. Books;
- 4. Snacks; or
- 5. Occasional outings.

(14) "Protective services" is defined by 209.020(5).

(15) "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
- (b) Caretaker;
- (c) Family;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- (g) Personal care home; or
- (h) Supports for Community Living facility.

(16) "Referral source" means an entity that makes an inquiry of the division for guardianship services such as:

- (a) A member of the general public;
- (b) Adult Protective Services;
- (c) Child Protective Services;
- (d) A family member;
- (e) A medical hospital;
- (f) A jail;
- (g) A psychiatric hospital; or
- (h) Another interested person or entity.

(17) "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by a court.

(18) "Ward" is defined by KRS 387.510(15).

Section 2. Eligibility. The cabinet shall accept an individual for guardianship if the individual:

- (1) Is an adult;
- (2) Has a disability or partial disability as determined by a hearing pursuant to KRS 387.580 and 387.740(1);
- (3) Is a legal resident of the Commonwealth;
- (4) Has no available informal network of support;
- (5) Has exhausted all other least restrictive alternatives;
- (6) Has no other suitable person or entity available or willing to be the individual's guardian pursuant to KRS 387.600(1); and
- (7) Is appointed by a court to be a ward of the cabinet.

Section 3. Referral, Petition, and Application for Individuals Who Are Not Adjudicated. (1) If a referral source wishes the cabinet to be guardian, conservator, limited guardian, limited conservator, or any combination thereof, the referral source shall first contact the division by phone or in writing.

(2)(a) For individuals who have not been adjudicated disabled, the division shall refer an inquiry requesting public guardianship to the Division of Protection and Permanency, Adult Protective Services (APS) to determine if there is a protective need.

(b) The division shall determine if an inquiry meets acceptance criteria for guardianship through consideration of the following:

- 1. Least restrictive alternatives to guardianship have been exhausted;
- 2. All options for informal network of support have been explored;

3. There is a substantiated protective need;
 4. There is a need for protective services;
 5. The individual appears to lack sufficient understanding or capacity to make or communicate an informed choice to:
 - a. Manage personal affairs;
 - b. Manage financial affairs; or
 - c. Carry out activities of daily living;
 6. If another individual or entity may be willing and able to serve as guardian or why the individual or entity is unable to serve;
 7. The degree of guardianship that is appropriate to meet the substantiated ongoing protective needs of the individual; or
 8. The positive benefit to the individual that the appointment of a guardian would provide.
- (3) If the division determines that there is a case for guardianship, the division shall, except for an emergency case, send to the referral source the following within ten (10) working days of the determination:
- (a) A current blank version of an AOC-740, Petition to Determine If Disabled, issued by the Administrative Office of the Courts and available at www.courts.ky.gov;
 - (b) A current blank version of a GFS-1, Guardianship Information Referral Form; and
 - (c) A cover letter instructing the referral source to complete and return the forms specified in paragraphs (a) and (b) of this subsection to the division.
- (4) If the referral source completes the forms specified in subsection (3)(a) and (b) of this section, the division shall complete, sign, and notarize:
- (a) An AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and
 - (b) The AOC-740, Petition to Determine If Disabled specified in subsection (3)(a) of this section.
- (5) The division shall return the completed forms specified in subsections (3)(a), (b) and (4) of this section with a cover letter to the referral source instructing the referral source to file the documents with the court.
- (6) If the division is notified of a hearing from the court, division staff shall attend the hearing to meet the respondent and gather information concerning the case.

Section 4. Guardianship Referral for Individuals Who Have Been Adjudicated. (1) Within ten (10) working days of a referral, the division shall send to the referral source:

- (a) A blank AOC-795, Petition for Relief Modification or Termination, issued by the Administrative Office of the Courts and available at www.courts.ky.gov;
 - (b) The GFS-1, Guardianship Information Referral Form; and
 - (c) Cover letter instructing the referral source to complete the forms specified in paragraphs (a) and (b) of this subsection.
- (2) The referral source shall complete the forms listed in subsection (1)(a) and (b) of this section and return the forms to the division.
- (3) The division shall review the documentation from the referral source and request any additional information needed for the division to complete the application process.
- (4) The division shall complete, sign, and notarize an AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at www.courts.ky.gov, requesting that the cabinet be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof.
- (5) The division shall return the forms specified in subsections (1)(a), (b) and (4) of this section with a cover letter instructing the referral source to file the forms with the court.

(6) If the division is notified of a hearing by the court, division staff may attend the hearing to meet the respondent and gather information concerning the case.

(7) If the court requests, division staff attending court shall be sworn in as successor guardian.

Section 5. Nonacceptance for a Guardianship Referral. (1) If the referral does not meet the eligibility requirements of Section 2 and acceptance criteria in Section 3(2)(b) of this administrative regulation, the petitioner may consult with the division for explanation and referral to other services.

(2) Guardians for disabled adults are appointed pursuant to KRS 387.500 to 387.990.

Section 6. Opening a Case. (1)(a) Upon notification of guardianship appointment, the division shall review the Administrative Office of the Court's, AOC-785, Disability Judgment, and AOC-775, Order of Appointment of Fiduciary, or any other legal document issued by the court to ensure the cabinet's authority is clear and concise.

(b) If the information is not clear and concise, the division shall ask the court for clarification following the process established by the individual jurisdiction.

(2)(a) If it is an emergency appointment, the division shall immediately assign the case to guardianship field staff.

(b) If the cabinet has no current involvement with the ward, a cabinet employee such as a nurse consultant, doctor, ombudsman, social worker, or guardianship services staff shall:

1. Contact the ward or provider; and

2. Assess the ward's need within two (2) working days of an emergency guardianship appointment.

(3)(a) If it is not an emergency appointment, the division shall assign the case to guardianship staff within ten (10) working days of notification from the court.

(b) If cabinet has current involvement, the Field Services Branch shall meet the ward and assess his or her needs within:

1. Five (5) working days of case assignment for a ward in a supervised setting; or

2. Thirty (30) working days of case assignment for a ward in a supervised setting by:

a. Visiting the ward to assess current physical condition and needs;

b. Reviewing the ward's records at his or her place of residence; and

c. Consulting with a care provider concerning the ward's care.

(4) Within thirty (30) working days of appointment, the division shall: Within thirty (30) working days of appointment, the division shall:

(a) Collect and verify names, addresses, and telephone numbers of the ward's relatives and other pertinent contacts;

(b) Determine if the ward has:

1. A will;

2. A burial policy;

3. An end-of-life decision document;

4. Durable power of attorney; or

5. Another power of attorney;

(c) Obtain an original or copy of the ward's wishes if the family has knowledge of the ward's wishes;

(d) Inform the Fiduciary Services Branch of any additional financial information obtained during the assessment;

(e) Secure and provide services as necessary for the protection and well being of the ward and his or her estate;

(f) Make a decision, in consultation with the Fiduciary Services Branch, regarding benefits and financial services; and

(g) Document a face-to-face visit with the ward.

(5) The division shall:

(a) Obtain information regarding assets and liabilities, including an inventory of:

1. Personal property;
2. Real property, including a copy of the deed;
3. A mortgage;
4. A note;
5. A lien and encumbrance;
6. Tax documentation including income tax information;
7. A bank statement;
8. A picture of personal belongings; and
9. A copy of a facility personal needs statement; and

(b) Forward all financial information, including blank checks from the ward's checking account, to the Fiduciary Services Branch.

(6) The division and one (1) additional cabinet employee, if available, shall complete a physical inventory of all personal and real property.

(7) At the direction of the court, the division shall determine if it is in the best interest of the ward to liquidate or surrender a life insurance policy owned by the ward.

(8) Within thirty (30) working days of court notification of the cabinet's appointment authorizing the management or disposal of the ward's assets, the division shall:

- (a) Obtain a copy of the deed for any real property owned or co-owned by the ward;
- (b) Obtain a copy of a mortgage or lien on the property;
- (c) Determine if the ward's real property is inhabited by someone other than the ward; and
- (d) Determine if there is a tenant and:

1. Contact the tenant about the cabinet's appointment;
2. Determine if there is a written lease and, if so, request a copy from the tenant;
3. Advise the tenant that a rent payment shall be made payable to CHFS and the name of the ward and mailed to the Fiduciary Services Branch at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621;

4. Advise the tenant of the cabinet's need to make a walk through inspection of the property; and

5. Complete the walk through inspection with the Field Services Branch and one (1) additional cabinet employee, if available.

(9) If the property is vacant, guardianship staff shall visit the ward's property with one (1) additional cabinet employee, if available, to secure the ward's personal and real property.

(10)(a) Unless there is lack of a ward's financial resources, the division shall secure and maintain insurance coverage on any real property.

(b) The division shall notify the court if it is not possible to maintain insurance coverage on any real property.

(11) The division shall contact the Property Valuation Administrator in the county where the real estate is located to determine the property evaluation and to see if taxes are owed and change the address for the ward's tax statement to the appropriate Field Services Branch's office address.

(12) The division shall attach a copy of the inventory of personal property to an event in the electronic case record and file the original inventory in the ward's hard copy case record.

(13) Upon receipt of the following items, the Field Services Branch shall forward the items to the Fiduciary Services Branch by certified mail insuring any negotiable items or items of value

for the estimated value as follows:

- (a) Any small items of value such as jewelry or coins; and
- (b) Original documents related to finances or personal assets such as:
 - 1. A will;
 - 2. A burial policy;
 - 3. Stocks;
 - 4. Bonds;
 - 5. Insurance policy; or
 - 6. Mineral rights ownership.

(14) The Field Services Branch shall document in the ward's case record an item to be transferred to the Fiduciary Services Branch and the disposition of each item.

(15) If a ward is not residing in the ward's home, or a tenant is not residing in the ward's home, the Field Services Branch shall contact a utility company providing services to:

- (a) Change the billing address to an appropriate Field Services Branch's office address; and
- (b) Request that the utility be disconnected, if appropriate.

(16) The Field Services Branch and Fiduciary Services Branch shall determine whether the property is to be maintained as rental property or to be sold and, if sold, shall follow the provisions of KRS Chapter 389A.

(17) If the ward does not have sufficient liquid assets to meet the ward's needs, the Field Services Branch shall consult with the Fiduciary Services Branch and request the ward's assets be liquidated and deposited into the ward's account.

(18) If the ward has a safety deposit box, the Field Services Branch shall:

- (a) Contact the financial institution where the safety deposit box is located;
- (b) Review the ward's financial resources and determine if funds are available to drill the safety deposit box if the cabinet does not have a key;
- (c) Relay this information to the Fiduciary Services Branch;
- (d) Attend the opening of the safety deposit box with one (1) additional cabinet employee, if available; and
- (e) Inventory the box's content.

(19) If the ward does not have funds available to drill the safety box and the cabinet does not have a key, the Field Services Branch shall not pursue opening the safety deposit box.

Section 7. Confidentiality. (1) The cabinet shall ensure the confidentiality of all records and reports that directly or indirectly identify current or former wards.

(2) Prior to release of information, the cabinet shall use discretion in considering whether:

(a) Disclosure of the information is permissible under federal and state statutes, including the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164;

(b) The person requesting the information is an authorized representative of a federal, state, or local government agency with a legitimate interest in the ward;

(c) The person requesting the information is a representative of an agency with which the cabinet has an agreement assuring the confidentiality of all shared information and the agency has a legitimate interest in the ward;

(d) Disclosure of the information is necessary and relevant to the issue being addressed such as:

- 1. Application for benefits;
- 2. Insurance information;
- 3. Sale of property;
- 4. Taxes; or

5. Services;

(e) Disclosure of the information is approved by the ward if the case involves partial guardianship;

(f) Disclosure of the information is beneficial for the ward such as release of information to concerned family members or to a person applying to be appointed as successor guardian;

(g) There is a court order authorizing the release of information; or

(h) There is a subpoena requesting the records.

(3) If the cabinet decides that the request for information does not meet the criteria for disclosing information and the request is specific to the ward's:

(a) Guardianship file, the cabinet shall refer the person requesting information to an open records process; or

(b) Court record, the cabinet shall refer the person requesting information to the District Court having jurisdiction.

(4) General media and publication requests for wards may be made to the cabinet.

(5) The cabinet may grant permission for publication of the ward's name, photograph, or image if:

(a) The ward grants permission;

(b) There is no harm or detrimental effect to the ward; and

(c) The ward is not identified as a ward of the cabinet.

(6)(a) In order to document abuse, neglect, injury, treatment, or for identification purposes, a provider shall seek permission of the cabinet to photograph the ward.

(b) To meet these requirements, the cabinet:

1. May give consent for the photo requests; and

2. Shall ensure the requesting service provider uses photographs only at the discretion of the division.

(7)(a) Requests for a ward's participation in research projects may be made to the cabinet.

(b) The cabinet:

1. Shall not give permission for the ward's participation in any research that is experimental, is a blind study, or involves invasive or intrusive procedures;

2. Shall seek the ward's permission to participate;

3. May give permission for participation in research that consists of a ward interview if the:

a. Cabinet's internal review board has reviewed and approved the research project in accordance with 920 KAR 1:060; and

b. Ward agrees to participate; and

4. Shall ensure that any interview of a ward related to a research request terminates immediately if the ward expresses a desire not to continue participation.

Section 8. Incorporation by Reference. (1) "GFS-1, Guardianship Information Referral Form", edition 3/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 910 KAR 2:020 Referral Process for Adult Guardianship. (35 Ky.R. 1972; 2113; 2285; eff. 5-1-2009.)